(3)

91-182

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER 1991 TERM

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JOSEPH M. WARD

PETITIONER

V

ROY H. PARK BROADCASTING CO., INC. AND ROY HARDEE

RESPONDENTS

****

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

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BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED FOR REVIEW

The Respondents disagree with Petitioner's presentation of the Questions Presented For Review and submit in lieu thereof, the following:

I. WHETHER THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING THE DISMISSAL OF THE PETITIONER'S CLAIMS CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT?

II. WHETHER THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING SANCTIONS AGAINST THE PETITIONER BY THE TRIAL COURT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT?

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ARGUMENT

I. THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING DISMISSAL OF THE PETITIONER'S CLAIMS DID NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Respondents contend the Petitioner's Petition for Writ of Certiorari does not present any legitimate federal questions cognizable by this court, especially regarding the dismissal of the Petitioner's complaint pursuant to summary judgment.

Under N.C. Gen. Stat. 1A-1, Rule 56(c) (1990), summary judgment shall be granted "if pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law."

At the time of the broadcasts complained

of, Petitioner was voluntarily serving as Medical Director at a nursing home which was then the subject of several lawsuits. All the lawsuits referred to in the broadcasts were a matter of public record. Respondents in this action offered Petitioner the opportunity to make a statement on the air in regard to the lawsuits surrounding University Nursing Center.

At the summary judgment hearing, the Court considered all pleadings filed by both parties, depositions of Roy Hardee and Lonnie Butler, affidavits of Hardee and Petitioner, the videotapes of the allegedly defamatory newscasts and the arguments of the parties. The trial court concluded that broadcasts were protected by absolute or qualified privilege.

Under Article I, § 14 of the North Carolina Constitution, "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse." This section of our Constitution is considered under the doctrine of "qualified

privilege." Johnston v. Time, Inc., 321 F. Supp. 837, (M.D.N.C. 1970), aff'd in part and rev'd in part, 448 F.2d 378 (4th Cir. 1971). Whether or not a publication has a qualified privilege is a question of law for the trial court. Towne v. Cope, 32 N.C.App. 660, 233 S.E.2d 624 (1977).

This Court has held that defamation of a public figure requires "actual malice." New York Times Co. v. Sullivan, 376 U.S. 254 (1964). In order to establish actual malice, Petitioner must provide clear and convincing proof that the alleged defamatory statements were published with knowledge that they were false or with reckless disregard of the truth. Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 52, 91 S.Ct. 1811, 1824, 29 L.Ed.2d 296, 316-17 (1971).

There is no evidence that Respondents exhibited any evidence of reckless disregard for the truth or falsity of the allegations. In fact, the broadcasts appear to have been factually correct. The record shows that these news broadcasts were the result of an ongoing

investigation into the problems of University Nursing Center publicly reported by other newsmedia. Petitioner acknowledges, and the record reflects, that Respondents offered Petitioner and his superiors many opportunities to make a statement concerning the allegations.

This Court stated in Time, Inc. v. Hill, 385 U.S. 374 (1967):

> We believe that we will create a grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in news articles with a person's name, picture or portrait, particularly as related to nondefamatory matter. Time, Inc. v. Hill, 385 U.S. 374, 389 (1967) (emphasis added).

It is submitted that the decision of the North Carolina Court in the present action resulting in dismissal of Petitioner's claims is in full and complete conformity with the decisions of the Supreme Court of the United States.

II. THE ACTIONS OF TRIAL COURT WHICH WERE UPHELD BY THE APPELLATE COURTS OF THE

STATE OF NORTH CAROLINA IN AWARDING SANCTIONS AGAINST THE PETITIONER DID NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Again, the Respondents submit that no Federal question exists regarding the sanctions imposed against the Petitioner by the North Carolina trial court. Petitioner filed his amended complaint on 10 February 1987, which was virtually identical to the original complaint. Under Rule 11 of the N.C. Rules of Civil Procedure (effective 1 January 1987),

> (a) Signing by Attorney. -- .
>
> ....A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address.....The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of

> ligation.....If a pleading, motion, or other paper is signed in violation of this rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it,...., an appropriate sanction, which may include an order to pay to the other party...., including a reasonable attorney's fee.

N.C. Gen. Stat. 1A-1, Rule 11(a) (1988 Cum. Supp.). Under North Carolina's Rules of Civil Procedure (Rule 11(a)), the trial court does not need to conclude that an attorney or other party has shown subjective bad faith. Turner v. Duke University, 325 N.C. 152, 164, 381 S.E.2d 706, 713 (1989) (citations omitted).

In its order dated 10 June 1990, the trial court found as fact:

> 7. That the file in this matter is voluminous exhibiting that conscientious efforts were made on behalf of the Respondents by the Respondents' counsel;
>
> 8. That this ligation was very technical and included multiple depositions, multiple sets of interrogatories, numerous hearings on various motions, all of which required counsel for the Respondents to expend numerous hours in court appearances, deposition appearances, research, and preparation for court appearances;
>
> 9. That since February 22, 1987, the

> Respondents have incurred legal expenses in the amount of $13,450.00;
>
> 10. That the evidence in this case points to the fact that the amended complaint in this matter was under the law spurious and without foundation;
>
> 11. That the complaint was in fact a sham on the court and was not filed in good faith....

CONCLUSION

First, the Respondents respectfully move the Supreme Court of the United States to deny the Petition for Writ of Certiorari filed herein by the Petitioner, on the following grounds:

1. That the Petitioner maintains no appeal of right from the Supreme Court of North Carolina by virtue of the fact that the case does not directly involve a substantial question arising under the Constitution of the United States and the failure of the Petitioner to properly and timely raise any legitimate constitutional issue or to advance any argument or cite any case authority regarding any constitutional issue if, in fact, any exists.

That, in fact, several defenses were raised by the Respondents in the trial court, any one of which was sufficient to sustain a judgment for Respondents, as recognized by the Court of Appeals of North Carolina.

2. That this pro se civil action was filed in 1986. For the past five years Petitioner has wasted the judicial time and resources of the State of North Carolina and put Respondents to unwarranted legal expenses, while he sought damages for nothing more than the Respondents' failure to report the news the way that Petitioner wanted it reported. As is amply illustrated by his two hundred ninety-eight page Record on Appeal in North Carolina, Petitioner has had his day in Court, and much more. The North Carolina Court of Appeals' opinion deals fully and fairly with every point raised by Petitioner in this frivolous appeal, and Respondents rely upon the well-reasoned, unanimous opinion of the North Carolina Court of appeals as their response to the Petition for Writ of Certiorari.

Second, in the event the Court denies the Petition for Writ of Certiorari, the Respondents move the Court, pursuant to Rule 42(2) of the Rules of the Supreme Court of the United States, to award Respondents damages and double costs.

Respectfully submitted this 6th day of August, 1991.

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